IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

WP(C).No. 21604 of 2007(V)

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PETITIONER:

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C.SANTHAMMA, M/S.VINOD GAS AGENCY,
KARTHIKA UTHRAM BUILDING, NO.P.P.XII/1387,
PUNNAMOODU, BHAGAVATHY TEMPLE NADA, PALLICHAL P.O.
TRIVANDRUM - 695 501.

BY ADV. SRI.D.S.SREEKUMARAN
SMT.T.S.MAYA (THIYADIL)
SMT.REKHA NAIR
SMT.K.REENA
SRI.M.JAYAPRASAD

RESPONDENTS:

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1. REGIONAL PROVIDENT FUND COMMISSIONER,
REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM - 4.

2. ASSISTANT PROVIDENT FUND COMMISSIONER,
REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM - 4.

BY STANDING COUNSEL FOR EPF ORGANISATION
SMT.T.N,GIRIJA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**S. SIRI JAGAN, J.**

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**WP(C) NO. 21604 OF 2007 - V**

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**Dated this the 13th day of July, 2007**

**J U D G M E N T**

The petitioner runs a gas agency. According to the petitioner, she does not employ sufficient number of persons so as to attract the provisions of the Employees Provident Funds and Miscellaneous Provisions Act (for short 'the Act'). The petitioner was given a notice Ext.P1 directing her to appear for deciding the question as to why the provisional decision of the second respondent to cover the petitioner's establishment under the Act from 1.8.2005 onwards. The petitioner filed objections to the same. She also approached this Court by filing W.P(C) No.207 of 2007 in which this Court directed the second respondent to proceed after deciding the question of coverage. The petitioner submits that apparently being unable to find any evidence to cover the petitioner's establishment under the Act, as a fishing expedition, the second respondent has directed the petitioner to produce various documents as detailed in Ext.P4 for period from the inception of the

establishment. According to the petitioner, her establishment started in the year 1986 and she does not have all the books of account from that year onwards, but have only records from 1998 onwards, which have been produced before the second respondent. The petitioner has filed Ext.P5 reply to Ext.P4 notice detailing as to why the petitioner cannot produce the other documents. She apprehends that in spite of the same, the second respondent may take an adverse decision on the only ground that petitioner has not produced those documents. The petitioner therefore seeks the following reliefs:-

> "a. Issue a writ of Mandamus directing the respondents to examine the applicability of the Act in accordance with law w.e.f. 1-8-2005 as is stated in Exts.P1 & P2 on which the Ext.P3 direction was issued by this Hon'ble Court.
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> b. And to issue any order as this Court may deem fit to grant in the facts and circumstances of this petition."

2. I have heard the learned Standing Counsel for

the respondents also. The Standing Counsel would submit that in order to ascertain the number of persons employed by the petitioner, it is necessary to peruse the back records also and that is why Ext.P4 has been issued. The Standing Counsel would argue for sustaining Ext.P4.

3. After hearing both sides, I am not satisfied that the second respondent can insist on production of documents for 20 years and decide against the petitioner on the merely ground that the petitioner has not produced documents for all those years. The second respondent can only insist on production of such of those documents which the petitioner is liable to retain without destroying as per law.

4. In the above circumstances, I direct the petitioner to produce such of those documents as are available with her and file an affidavit stating as to why the documents for other periods cannot be produced. The second respondent is directed to proceed under Section 7A of the Act based on such affidavit. I once

again make it clear that the second respondent cannot direct coverage of the petitioner's agency, simply because the petitioner has not produced the records for all the 20 years.

The writ petition is disposed of as above.

**S. SIRI JAGAN,**
**Judge**

Mbs/

**S.SIRI JAGAN, J**

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W.P.(C) NO. OF 2001

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J U D G M E N T

DATED:01-06-2007